ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
LARRY D. VAUGHT, JUDGE

DIVISION I

CA05-1384

December 6, 2006

THOMAS GARNER, DOLLIE GARNER and BANK OF AMERICA
APPELLANTS

V.

ARKANSAS STATE HIGHWAY COMMISSION
APPELLEE

APPEAL FROM THE POPE COUNTY CIRCUIT COURT
[CIV 2000-141]

HON. JOHN S. PATTERSON, CIRCUIT JUDGE

AFFIRMED

In this eminent-domain case appellants Dollie and Thomas Garner argue that the trial court abused its discretion in not allowing them to argue that there were two separate tracts of land and by instructing the jury that there was only one tract of land for them to consider. We find no error and affirm.

Appellee, the Arkansas State Highway Commission, filed a complaint on May 1, 2000, declaring that it would be taking a half acre of the Garners' property by eminent domain to expand a state highway. The Commission deposited $19,450 into the court registry as compensation. The Garners contested the amount, and the parties went to trial on the issue of compensation.

Thomas Garner testified that although the properties adjoined, he bought the land as two parcels—one lot in 1965 as his primary residence consisting of seven acres and one lot in 1998 consisting of eight and a half acres that he used as rental property. He also testified that because of the State's acquisition of his property, his septic system had been destroyed. He asserted that in order to fix the problem, he would have to bore under the highway and tap into the city's sewer system at a cost of approximately $113,000. He approximated just compensation for his primary-residence tract at $109,000 and for his rental tract at $58,500.

The Commission's appraiser testified that $19,450 was just compensation for the half acre taken from the Garners. He stated that he did not appraise the land as two tracts and that no property line ran between the tracts.

At the conclusion of testimony, the Garners asked that they be allowed to argue and that the court instruct the jury that there were two tracts of land. The court denied the request. The jury returned a verdict awarding damages in the amount of $19,450.

For their first point, the Garners maintain that the trial court erred by not allowing them to argue that they had two separate tracts of land. Although the court denied the Garners' request, their attorney in fact asserted the two-tract argument during his closing argument. He specifically argued that the two tracts were purchased at different times, that the septic lines ran across both properties, and that both tracts had been damaged in specific amounts. He was therefore allowed to make the very argument he complains that he was denied. We have often said that when a party was granted all the relief requested, that party

cannot complain of that same issue on appeal. *Lagrone v. State*, 90 Ark. App. 183, __ S.W.3d ___ (2005).

Second, on the issue of whether the trial court erred in refusing to instruct the jury on two tracts of land, the Commission correctly points out that the Garners failed to proffer a jury instruction to the trial court. Although a trial court's ruling on submission of a jury instruction will not be reversed absent an abuse of discretion, *Grillot v. State*, 353 Ark. 294, 107 S.W.3d 136 (2003), a party requesting a jury instruction must proffer to the court a written copy of the proposed instruction, *Hart v. State*, 301 Ark. 200, 783 S.W.2d 40 (1990). Moreover, we have said that we will not find error in a trial court's denial of a requested instruction where that party failed to include the text of the proposed instruction in the abstract. *Osborne v. State*, 94 Ark. App. 337, __ S.W.3d __ (2006). In this case, the Garners failed to make a proffer to the trial court, and therefore failed to include a proffer in their appeal. Finding no merit in either point asserted by the Garners, we affirm.

Affirmed.

GLOVER and CRABTREE, JJ., agree.